



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 12, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Steven Barry Brown, M.D.



Steven Barry Brown, M.D.
Pompano Pain Management
605 East Atlantic Boulevard
Pompano Beach, Florida 33160

Steven Barry Brown, M.D.



Lee Davis, Esq.
NYS Department of Health
ESP-Coming Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Steven Barry Brown, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-041) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**IN THE MATTER
OF
STEVEN BARRY BROWN, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #16-041

COPY

A hearing was held on December 16, 2015, at the offices of the New York State Department of Health ("Department").¹ Pursuant to Section 230(10)(e) of the Public Health Law ("PHL"), **WILLIAM TEDESCO, M.D.**, Chairperson, **DENNIS P. ZIMMERMAN, M.S., CRC**, and **ROBERT CATALANO, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ESQ.**, **ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by Lee Davis, Esq. A Notice of Referral Proceeding and Statement of Charges dated September 16, 2015 and October 28, 2015, respectively, were served upon Steven Barry Brown, M.D. ("Respondent"), who did not appear at the hearing. There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") §§ 6530(9)(a)(iii) and 6530(9)(d), and unanimously votes 3-0 to revoke Respondent's license to practice medicine in the State of New York.

BACKGROUND

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

This case began with an Order by the Commissioner of Health, Howard A. Zucker, M.D., J.D., summarily suspending the Respondent's medical license pursuant to PHL § 230(12)(b). The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(iii) by having been convicted of a crime under the laws of another jurisdiction, "and which, if committed within this state, would have constituted a crime..." under New York state law. The charges against Respondent are also pursuant to Educ. Law § 6530(9)(d) by having his "license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

In the Circuit Court of Broward County, State of Florida, the Respondent was convicted of Possession of Oxycodone, in violation of Florida Criminal Statute § 893.135, a felony. The underlying conduct that is the subject of the criminal conviction resulted in the Florida State Board of Medicine ("Florida Board") issuing a Final Order, which subjected Respondent to disciplinary action and a permanent relinquishment of his Florida medical license. Whether the criminal conviction in Florida and the Florida Board's disciplinary action constitute misconduct here hinges on whether the underlying conduct would constitute professional misconduct if committed in New York. [Ex. 8].

The Department charges that Respondent's conduct in Florida, which resulted in a criminal conviction for drug possession, would have constituted a crime, had it occurred in New York, in violation of New York Penal Law § 220.03. The Department also charges that had Respondent's conduct occurred in New York, it would have constituted fraud, as defined in Educ. Law § 6530(2), negligence on more than one occasion, as defined in Educ. Law § 6530(3), practicing while impaired, as defined in Educ. Law § 6530(7), habitual user of narcotics, as defined in Educ. Law § 6530(8),

moral unfitness, as defined in Educ. Law § 6530(20), and failing to maintain accurate records, as defined in Educ. Law § 6530(32). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I. [Ex. 1].

FINDINGS OF FACT

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."] or transcript pages ["T."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Steven Barry Brown, M.D., the Respondent, was authorized to practice medicine in New York on July 24, 1996, by the issuance of license number 203921 by the Educ. Department. [Ex. 1, 2, 5].

2. On or about May 1, 2015, in the Circuit Court of the Seventeenth Judicial Circuit for Broward County, Florida, Respondent was convicted, following his plea of nolo contendere, of unlawfully possessing a controlled substance, oxycodone, in violation of Florida Criminal Statute § 893.135, a felony, and was sentenced to three years of probation and a fine. [Ex. 1, 7].

3. On or about May 5, 2010, the State of Florida Department of Health ("Florida DOH") ordered the emergency suspension of Respondent's license to practice medicine in Florida. The basis of the suspension was Respondent's conduct in issuing excessive prescription amounts of controlled substances to his chronic pain patients without proper evaluation, clinical justification, or a treatment plan and in the absence of maintaining their medical records. [Ex. 8].

4. The Respondent's conduct also included entering into an arrangement with one his chronic pain patients to issue monthly prescriptions for oxycodone for the purpose of improperly diverting the medication for his own use. This scheme continued for a period of two years and

involved Respondent prescribing the patient 160 Oxycodone tablets, at 30mg, in exchange for at least one-half of the pills and for which Respondent agreed to pay the patient cash. At the time of his arrest in the underlying criminal case, Respondent was observed by authorities to possess a syringe, multiple bottles of oxycodone, and other drugs. [Ex. 8].

5. In an offer of Voluntary Relinquishment signed by the Respondent on April 29, 2015, the Respondent agreed that the relinquishment of his medical license constituted disciplinary action against him. In a Final Order dated August 17, 2015, the Florida Board accepted Respondent's relinquishment of his medical license as disciplinary action upon his medical license and found that Respondent is permanently banned from re-applying for a Florida medical license. [Ex. 8].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee determined that the evidence supports sustaining the charge of having committed misconduct under Educ. Law § 6530(9)(a)(iii).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

After attempts to personally serve the Respondent with the Notice of Referral Proceeding and Statement of Charges at the address registered with the New York State Education Department ("Educ. Dept.") failed, the Department presented evidence that Respondent was served by certified mail to his

last known address, establishing service pursuant to PHL § 230(10)(d)(i). Accordingly, the ALJ ruled that the Board for Professional Medical Conduct obtained jurisdiction over him. [Ex. 2, 3, 4].

The Department made a motion to have the charges and allegations in the Statement of Charges deemed admitted pursuant to PHL § 230(10)(p), due to Respondent's failure to file a written answer. After determining that the Notice of Referral Proceeding complied with the requirement that a licensee be provided notice pursuant to PHL § 230(10)(p), and concluding that the Respondent failed to file a written answer to the specifications of misconduct and factual allegations in the Statement of Charges dated October 28, 2015, the ALJ ruled at the hearing that the charges and allegations were deemed admitted under PHL § 230(10)(p). [T. 15, 16; Ex. 1].

In addition to the allegations and specifications of misconduct being deemed admitted because Respondent failed to file a written answer, the Department provided the Hearing Committee with evidence to show that based on Respondent's conviction under Florida Statute § 893.135 for Possession of Oxycodone, Respondent committed professional misconduct as defined in New York Educ. Law § 6530(9)(a)(iii) by having committed an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law. Respondent pled guilty to the second count of the charges against him in the Florida criminal proceeding, that he did "unlawfully have in his actual or constructive possession a controlled substance, to-wit: Oxycodone, contrary to F.S. 893(2)(a)(1)(o) and F.S. 893.13(6)(a)." In New York state, Penal Law § 220.03 provides that "a person is guilty of possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance." Since the Florida statutes and the New York state Penal Law section are substantially the same, the Hearing Committee concludes that Respondent's conduct of possessing Oxycodone, a controlled substance,

in Florida, would have constituted a crime under New York state law, if he had committed it within New York state. [Ex. 7]

The Department's evidence also demonstrated that in the care rendered to his chronic pain patients that are the subject of the Florida Board's Final Order, the Respondent failed to properly perform assessments at office visits and provide for treatment plans or indicate medical rationales for prescribing controlled substances. Like Florida, in cases where physicians prescribe opioid-based drugs, New York requires physicians to perform assessments or physical evaluations at office visits and to take the time to assess whether prescriptions for controlled substance medications are medically necessary. Additionally, the Department presented evidence to show that the Respondent failed to adequately maintain his patients' medical records by not recording results of physical examinations and rationales for prescribing drugs. Respondent's failures, had they occurred in New York, would have constituted negligence on more than one occasion and a failure to maintain adequate medical records, as defined in Educ. Law §§ 6530(3) and 6530(32), respectively.

In the care he rendered to one of his patients, the Department's evidence showed that the Respondent engaged in an improper arrangement to receive more than one-half of the monthly oxycodone prescriptions he issued to the patient and in exchange for making cash payments. The Hearing Committee considered Respondent's conduct in the use of his medical license to issue such prescriptions for a highly addictive and habit-forming opioid while misrepresenting a material fact—that more than one-half of the oxycodone was meant for himself—to be an immense breach of the public's trust. The Hearing Committee also noted the oxycodone bottles and syringe found in the Respondent's possession and in his vehicle at the time of his arrest in the underlying criminal case and concluded that Respondent's conduct, had it occurred in New York, would have amounted to

moral unfitness, fraud, and being a habitual user of narcotics, and practicing while impaired, as defined in Educ. Law §§ 6530(20), 6520(2), 6520(8), and 6530(7), respectively.

PENALTY DISCUSSION

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate Respondent's lack of integrity in the use of his medical license to render careless and potentially harmful medical care to patients prescribed controlled substances. Troubling to the Hearing Committee was Respondent's participation in a drug-splitting deal with a patient to benefit his drug problem while at the same time failing to document in medical records important information. The Hearing Committee was not convinced that the same prescription practices Respondent exhibited in Florida would not occur should he decide to practice medicine in New York. Additionally, Respondent's non-appearance at the hearing left the Hearing Committee without an opportunity to evaluate any defenses in mitigation of his conduct or to assess any rehabilitation efforts. As such, the Hearing Committee unanimously concluded that the evidence supports the penalty of revocation of Respondent's New York medical license.


ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications contained in the Statement of Charges are **SUSTAINED**;
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**;
3. This Determination and Order shall be effective upon service on the Respondent. Service shall


be either by certified mail or upon the Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.


DATED: Albany, New York
2/12, 2016


William Tedesco, M.D.
Chairperson

Dennis P. Zimmerman, M.S., CRC
Robert Catalano, M.D.

TO: Steven Barry Brown, M.D.


Steven Barry Brown, M.D.


Steven Barry Brown, M.D.
Pompano Pain Management
605 E. Atlantic Blvd.
Pompano Beach, FL 33160

Lee Davis, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
STEVEN BARRY BROWN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Steven Barry Brown, M.D. Steven Barry Brown, M.D.

Steven Barry Brown, M.D.
Pompano Pain Management
605 E. Atlantic Blvd
Pompano Beach, FL 33060

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on December 16th, 2015 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a

¹ For GPS purposes, enter "Menands", not "Albany".



crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here

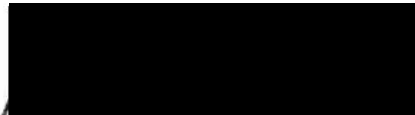
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated

above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
September 16, 2015



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Lee A. Davis
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
STEVEN BARRY BROWN, M.D.

STATEMENT
OF
CHARGES

STEVEN BARRY BROWN, M.D., Respondent, was authorized to practice medicine in New York State on July 24, 1996, by the issuance of license number 203921 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 1, 2015, in the Circuit Court of Broward County, State of Florida, Respondent pled guilty to one felony count of Possession of Oxycodone, in violation of Florida Criminal Statutes §893.135(6)(a). Respondent was sentenced to three years of probation.

B. On or about August 7, 2015, the Florida State Board of Medicine ("Florida Board") entered a Final Order ("Florida Final Order") based upon Respondent's voluntary relinquishment of his Florida medical license wherein the Florida Board deemed Respondent's voluntary relinquishment as discipline upon Respondent's medical license, pursuant to several Florida Department of Health Administrative Complaints charging Respondent with, *inter alia*, the violation of the following statutes, constituting unprofessional conduct: Florida Statutes §458.331(1)(q) [inappropriate prescribing of controlled substances]; Florida Statutes §458.50, §458.331(1)(t), and §766.102 [failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure]; Florida Statutes §458.331(1)(nn) [violating any provision of chapter 456, "Regulation of Professions and Occupations: Health Professions and Occupations: General Provisions"]; Florida Statutes §458.331(1)(m) [failing to keep legible medical records that identify the license physician and/or and supervising physician who is or are responsible for supervising each diagnostic or treatment procedure and that justify the course of treatment of the patient]; Florida Statutes §458.331(1)(k) [making fraudulent representations in the practice of medicine]; and Florida Statutes §458.331(1)(s) [being unable to practice medicine with reasonable skill and safety due to illness or impairment by drugs or alcohol].

C. Respondent's conduct upon which such findings of misconduct were based would, if committed in New York state, constitute professional misconduct under the laws of New York state, pursuant to the following sections of New York law:

1. New York Education Law §6530(2) (fraud in practice of medicine); and/or
2. New York Education Law §6530(3) (negligence on more than one occasion); and/or
3. New York Education Law §6530(7) (practicing while impaired); and/or
4. New York Education Law §6530(8) (~~habitual user of narcotics~~); and/or
5. New York Education Law §6530(20) (moral unfitness); and/or
6. New York Education Law §6530(32) (failing to maintain accurate records).

SPECIFICATION OF MISCONDUCT

First Specification

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §220.03) as alleged in the facts of the following:

1. The facts in Paragraph A.


Second Specification

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or his license to practice medicine revoked, suspended or having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

1. The facts in Paragraphs B and C.1, B and C.2, B and C.3, B and C.4, B and C.5, and/or B and C.6.

DATE: Albany, New York
September, 2015

October 28


MICHAEL A. FISER
Deputy Counsel
Bureau of Professional Medical Conduct